IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7047 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PATEL MANILAL BHAGWANDAS

Appearance:

1. Special Civil Application No. 7047 of 2002

MR ASHISH M DAGLI for Petitioner No. 1-2

MR KAMLESH B MEHTA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 04/08/2003

ORAL JUDGEMENT

1. Rule. Service of rule is waived by learned advocate Shri Kamlesh Mehta for the respondent. At the

request of the learned advocates, the petition is finally heard today.

2. In this petition, the petitioner, Gujarat State Road Transport Corporation, has challenged the legality and validity of the order dated 21st June 2002 passed by the 2nd Extra Assistant Judge, Mahesana in Civil Misc. Appeal No. 63 of 2002. By virtue of the said order, the appellate Court has confirmed the order passed below Exh. 155 in Regular Civil Suit No. 78 of 1995 by the Civil Judge [Junior Division], Visnagar on 19th April 2002.

3. Undisputed facts of the case are as under:

3.1 The respondent was given a licence for a period of 11 months to run a book stall at Visnagar ST Bus Depot in 1979. The said licence was renewed from time to time, and ultimately on 14th April 1984, the period of licence had come to an end. Inspite of the said fact, the respondent-licensee refused to give possession of the book stall.

3.2 The respondent-licensee was apprehending eviction, and, therefore, he filed Regular Civil Suit No. 30 of 1984 in the Court of Civil Judge [Junior Division], Visnagar. In the said suit, it was prayed that the respondent should not be dispossessed by the present petitioner. An application below Exh. 5 praying for an interim relief to the above effect was rejected by the Court. Being aggrieved by the said order, the respondent-licensee filed an appeal, and the appeal had also been rejected. Thereafter, the respondent had filed a Civil Revision Application before this Court challenging the validity of the order passed in the appeal, and the said Revision had also been rejected. Ultimately, the respondent-licensee withdrew Regular Civil Suit No. 30 of 1984 and filed another suit on the same date in the Court of Civil Judge [Junior Division], Visnagar, which was numbered as Regular Civil suit No. 78 of 1995. The prayer made in the said suit was also similar and the respondent-licensee filed an application below Exh. 5 praying for an interim order. The said application filed below Exh. 5 was rejected, and, therefore, the respondent-licensee filed an Appeal from Order. The said Appeal from Order had also been dismissed, and, therefore, C.R.A. No. 305 of 2002 was filed in this Court. Ultimately, the said C.R.A. No. 305/02 was also rejected by this Court on 18th March 2002. At the time of rejection of the C.R.A., possibly in pursuance of a request made by the learned counsel for the respondent-licensee, this Court had observed that it

would be open to the respondent-licensee [who was petitioner in the C.R.A] to make a representation for getting possession of the book stall till Regular Civil Suit No. 78 of 1995 was finally decided. In fact, no representation was made by the respondent-licensee, and, therefore, ultimately on 27th March 2002, the respondent-licensee was dispossessed of the book stall.

3.3 As the respondent-licensee has been dispossessed on 27th March 2002, he filed an application below Exh. 155 in Regular Civil Suit No. 78 of 1995 praying for possession of the book stall. It had been submitted in the said application that the respondent-licensee had paid licence fee for a period upto 31st March 2002, and, therefore, he could not have been dispossessed. It was also submitted that no fresh notice was given to the respondence licensee, and, therefore, it was not open to the present petitioner to have possession of the book stall. The said application below Exh. 155 was granted by an order dated 19th April 2002 and the petitioner was directed to put the respondent-licensee in possession, and to pay a sum of Rs.2000/_ to the respondent-licensee towards costs and damages.

3.4 Being aggrieved by the aforesaid order passed below Exh. 155, the petitioner filed Civil Misc. Appeal No. 63 of 2002 in the Court 2nd Extra Assistant Judge, Mahesana. The said appeal was dismissed, and being aggrieved by the said order passed in the Appeal, the petitioner has approached this Court by filing this petition.

4. Learned Advocate Mr. Dagli appearing for the petitioner has submitted that the respondent-licensee has no right to retain possession of the book stall after 14th April 1984 as period of licence expired on that day. Inspite of notice given to the respondent-licensee, the respondent did not give possession of the book stall, and thereafter filed Regular Civil Suit No. 30 of 1984, which was ultimately withdrawn. It has been submitted by him that all possible efforts were made by the respondent-licensee to retain possession of the book stall, but as he failed, he filed another suit being Regular Civil Suit No. 78 of 1995. Though the said suit is pending, the civil Court, civil appellate Court and even this High Court did not pass any order for protecting the licensee's possession, and, therefore, ultimately on 27th March 2002, possession of the book stall had to be taken with the help of police, as the respondent-licensee was not handing over the possession of the book stall.

5. It has been submitted by him that at present, an amount of Rs.15,151/_ per month is being offered as licence fee for running the said book stall by Shri Bhikhabhai Shankarbhai Patel whereas the respondent-licensee was paying licence fee of only Rs.351/_ per month when the said book stall was given on licence to him in 1984. It has been submitted by him that by virtue of the impugned order, the petitioner will have to give possession of the book stall to the respondent-licensee though he has no legal right to retain possession of the book stall after 14th April 1984.

6. It has been further submitted by the learned advocate for the petitioner that though it was not open to the respondent-licensee to retain possession of the book stall after 14th April 1984 he has remained in possession of the book stall, and he paid some amount to the Corporation though he was not a licensee, and he was not called upon to pay any sort of rent to the petitioner. The petitioner-Corporation, being a big Corporation, possibly the licensee must have given some amount to the Accounts Department and the amount would have been accepted but that would not mean that the respondent would get a legal right to retain possession simply because some amount is given in the accounts section of the petitioner-Corporation by the respondent.

7. It has been submitted by the learned advocate that the impugned orders are patently bad because the respondent-licensee had no right to retain possession of the book stall more particularly when this Court, on two different occasions, had not protected possession of the respondent-licensee. It has been, therefore, submitted by him that the impugned order passed by the appellate Court is required to be quashed and set aside so that the petitioner-Corporation can give the said book stall to some one else so that the travellers can avail of the facility of a book stall at Visnagar ST Bus Depot and the Corporation can start earning approximately Rs.15,000/_ per month by way of licence fee.

8. On the other hand, learned advocate Mr. Kamalesh Mehta appearing for the respondent has submitted that the respondent has been wrongly dispossessed of the book stall. It has been submitted by him that during the pendency of Regular Civil Suit No. 78 of 1995, the petitioner-Corporation could not have taken possession of the book stall from the respondent. It has been also submitted by him that some proceedings have also been

initiated by the petitioner-Corporation under the provisions of the Gujarat Public Premises [Eviction of Unauthorized Occupants] Act and during the pendency of the said proceedings, it is not open to the petitioner-Corporation to dispossess the petitioner. It has been lastly submitted by him that the respondent was forcefully and illegally dispossessed on 27th March 2002 without issuance of any notice. It has been submitted that the belongings of the respondent had been thrown away with the help of police, and, therefore, the action of the petitioner-Corporation must be condemned. It has been further submitted by him that the impugned order passed in the Appeal, and the order passed below Exh. 155 in Regular Civil Suit No. 78/95, are just, legal and proper, and therefore, this petition deserves to be rejected.

9. Upon hearing the learned advocates and upon perusal of all the orders passed in respect of the subject matter, it is not in dispute that the respondent-licensee had no right to retain possession of the book stall after 14th April 1984. As stated hereinabove, the respondent-licensee had failed in all litigations which he had initiated against the petitioner-Corporation for retaining the possession of the book stall.

10. In my opinion, after 14th April 1984, the respondent-licensee had no right to retain possession of the book stall. After the said date, he was in illegal possession of the book stall. It is pertinent to note that in both the rounds of litigations, all the Courts have held against the respondent-licensee. Simply because Regular Civil Suit No. 78 of 1995 filed by the respondent-licensee is pending, the respondent-licensee would not get any right to retain possession, more particularly when his application below Exh. 5 had been rejected, and the said rejection had not only been confirmed by the first appellate Court but also by this Court in C.R.A. No. 305 of 2002.

11. Simply because the respondent-licensee had made some payment without having any right to get somebody's property on licence, the respondent would not get any right to retain possession in an illegal manner. As stated hereinabove, the possession of the respondent after 14th April 1984 is absolutely illegal and wrong.

12. Upon perusal of the order passed below Exh. 155 in Regular Civil Suit No. 78 of 1995 and the order passed in Civil Misc. Appeal No. 63 of 2002, it is

clear that the learned Judges were under an impression that the respondent-licensee had a right to retain possession upto 31st March 2002. In my opinion, the respondent had no such right to retain possession simply because he made some payment, and that too without having any authority to have the bookstall on the licence.

13. Looking to the facts stated above, I am of the opinion that the impugned order is unjust and improper. In my opinion, the respondent-licensee had no right to retain possession, and therefore, it cannot be said that the respondent-licensee was dispossessed in an illegal or improper manner. If the book stall, which is meant for the benefit of the travellers who avail of the facilities given by the petitioner-Corporation cannot be used for their benefit, in my opinion, keeping such a book stall at ST Bus Depots would be of no use. Moreover, a substantial amount is being lost by the petitioner-Corporation at present because by virtue of the impugned order, the petitioner-Corporation is unable to give the said book stall to anyone, though one person is ready and willing to pay Rs.15,151/_ per month to the petitioner-Corporation.

14. For the reasons stated hereinabove, the impugned order dated 21.6.2002 passed by the 2nd Extra Assistant Judge, Mahesana in Civil Misc. Appeal No. 63 of 2002 and the order dated 19.4.2002 passed by the learned Civil Judge, [Junior Division], Visnagar below Exh. 155 in Regular Civil Suit No. 78 of 1995, are quashed and set aside. It is, however, clarified that if ultimately in Regular Civil Suit No. 78 of 1995 filed by the respondent-licensee, the Civil Court gives any directions to the Corporation with regard to handing over possession of the book stall to the respondent-licensee, the petitioner shall handover possession thereof in accordance with law, subject to the final outcome of the said litigation. It will be open to the petitioner-Corporation to give the said book stall on licence basis to any one, subject to the condition that if ultimately the Corporation losses in the aforesaid litigation, the licensee shall have to handover possession of the said book stall. This petition stands allowed accordingly. Rule made absolute accordingly. No order as to costs.

15. Learned advocate Mr. Kamlesh Mehta has submitted that inspite of directions given by this Court in C.R.A. No. 305 of 2002, Regular Civil Suit No. 78 of 1995 is not being heard expeditiously. It is hoped that the said

suit shall be heard as expeditiously as possible.

[A. R. DAVE, J.]
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